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EXAMINER	
DAVIS, RUTH A	

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1651	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/554,155

Applicant(s)

PREDAL, LUDOVIC

Examiner

Ruth A. Davis

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claims 1 and 12 are objected to because of the following informalities:

In claim, line 2, "compositions" should read "composition".

Claim 12 should end with a period.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 – 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 and its dependents are drawn to a composition however are rendered vague and indefinite for reciting "or combined" in line 3, because it is unclear what is being combined, or what "combined" ALA intends to encompass.

Claims 1, 10 and their dependents are confusing for reciting "global" because it is unclear what applicant intends to encompass by this term.

Claim 12 is indefinite for reciting "some" GLA, because it is unclear how much "some" means, or how much must be present to meet the limitation of the claim.

In claim 14, line 2-3, "the excipient or vehicle" lacks sufficient antecedent basis.

Claim 15 is indefinite because it fails to further limit the claim from which it depends.

Claim 16 is confusing because it is unclear if the composition rather comprises GLA or further comprises GLA.

Claim 16 is further confusing because it is unclear if the GLA alone is dispersed in oil, or if the entire composition is dispersed in oil.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 – 2, 4 – 8, 10 – 11 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Nippon Oils (JP 03297364).

Nippon Oils teaches a pharmaceutical powder comprising at least 10% EPA and DHA; and 20 – 70% ALA, wherein the fats are oils derived from sardines and Perilla species (abstract).

The reference anticipates the claimed subject matter.

6. Claims 1 – 2, 4 – 5, 8, 10 – 11 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Yeo (US 5312834).

Yeo teaches a pharmaceutical composition comprising EPA and ALA which are derived from fish and perilla oils (abstract). Specifically, the EPA is present at 5 – 30% and the perilla oil containing ALA is present at 40 – 70% (col.4 line 5-15) and the composition is a capsule (col.4 line 49-51) or liquid (one spoonful, col.4 line 60-66).

Although the reference does not teach including DHA, the claims as written do not require DHA, but is listed as an alternative to EPA. Therefore the reference anticipates the claimed subject matter.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 9 and 13 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nippon in view of Maingault (FR 2721517).

Nippon Oils teaches a pharmaceutical powder comprising at least 10% EPA and DHA; and 20 – 70% ALA, wherein the fats are oils derived from sardines and Perilla species (abstract).

Nippon does not teach the composition wherein the ALA is derived from kiwi seed oil. However, at the time of the claimed invention, kiwi seed oil was known to be a rich source of ALA. In support, Maingault teaches that kiwi seeds are high in ALA and that administration of

the oil is suitable for pharmaceutical administration. At the time of the claimed invention, it would have been obvious to use kiwi seed oil as the source of ALA in the composition of Nippon since it was a known source of ALA, as evidenced by Maingault. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated by the teachings of Maingault to use kiwi seed oil in the composition of Nippon with a reasonable expectation for successfully obtaining the effective pharmaceutical on Nippon.

Nippon does not teach the composition wherein the ALA is in the claimed form or wherein one of the claimed carriers is present. However, at the time of the claimed invention, the claimed forms and carriers were well known and used in the art for their claimed purpose as a matter of routine practice. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated by routine practice to use any of the forms of ALA or claimed carriers in the composition of Nippon with a reasonable expectation for successfully obtaining the effective composition of Nippon.

Nippon does not teach the claimed amounts of ALA, EPA and DHA. However, each of the claimed components are noted as active ingredients by Nippon. Thus, the amounts of these components are recognized result effective variables. Moreover, at the time of the claimed invention, it would have been obvious to one of ordinary skill in the art to optimize the amounts of fatty acids with a reasonable expectation for successfully obtaining an effective pharmaceutical composition.

9. Claims 3, 6 – 7, 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeo in view of Maingault.

Yeo teaches a pharmaceutical composition comprising EPA and ALA which are derived from fish and perilla oils (abstract). Specifically, the EPA is present at 5 – 40% and the perilla oil containing ALA is present at 40 – 70% (col.4) and the composition is a capsule (col.4 line 49-51) or liquid (one spoonful, col.4 line 60-66). Although the reference does not teach including DHA, the claims as written do not require DHA, but is listed as an alternative to EPA.

Yeo does not teach the composition wherein the EPA is derived from the claimed fish or ALA is derived from kiwi seed oil. However, Yeo teaches that commercially available fish are suitable for providing the source of fish oil (col.4). At the time of the claimed invention, each of the claimed fish were known, commercially available fish. IN addition, kiwi seed oil was known to be a rich source of ALA. In support, Maingault teaches that kiwi seeds are high in ALA and that administration of the oil is suitable for pharmaceutical administration. At the time of the claimed invention, it would have been obvious to use the claimed fish and kiwi seed oils as the source of EPA and ALA in the composition of Yeo since Yeo suggests commercially available fish, and kiwi seed were a known source of ALA, as evidenced by Maingault. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated by common knowledge and the teachings of Maingault to use the instant sources of oils in the composition of Yeo with a reasonable expectation for successfully obtaining the effective pharmaceutical on Yeo.

Yeo does not teach the composition wherein the ALA is in the claimed form or wherein one of the claimed carriers is present. However, at the time of the claimed invention, the claimed forms and carriers were well known and used in the art for their claimed purpose as a matter of routine practice. Moreover, at the time of the claimed invention, one of ordinary skill in the art

would have been motivated by routine practice to use any of the forms of ALA or claimed carriers in the composition of Yeo with a reasonable expectation for successfully obtaining the effective composition of Yeo.

10. Claims 1 – 8 and 10 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuura et al. (US 5756088).

Matsuura teaches nutraceutical compositions comprising GLA, ALA, EPA and DHA (abstract, col.2 line 5-10) wherein the GLA and ALA are derived from plant oils and the EPA and DHA are derived from fish oils to include sardines and tuna (col.2 line 10-20). The fatty acids are present at 1 – 50% (col.2 line 55-60) and the composition may be a powder, granule or solution (liquid) (col.3 line 30-35).

Matsuura does not teach the composition wherein the claimed carriers are present. However, at the time of the claimed invention, the claimed carriers were well known and used in the art for their claimed purpose as a matter of routine practice. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated by routine practice to use any of the claimed carriers in the composition of Matsuura with a reasonable expectation for successfully obtaining the effective composition of Matsuura.

Matsuura does not teach the claimed amounts of fatty acids. However, each of the claimed components are noted as active ingredients by Matsuura. Thus, the amounts of these components are recognized result effective variables. Moreover, at the time of the claimed invention, it would have been obvious to one of ordinary skill in the art to optimize the amounts

of fatty acids with a reasonable expectation for successfully obtaining the effective composition of Matsuura.

11. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuura in view of Maingault.

Matsuura teaches nutraceutical compositions comprising GLA, ALA, EPA and DHA (abstract, col.2 line 5-10) wherein the GLA and ALA are derived from plant oils (col.2 line 10-20). The fatty acids are present at 1 – 50% (col.2 line 55-60) and the composition may be a powder, granule or solution (liquid) (col.3 line 30-35).

Matsuura does not teach the claimed amounts of fatty acids. However, each of the claimed components are noted as active ingredients by Matsuura. Thus, the amounts of these components are recognized result effective variables. Moreover, at the time of the claimed invention, it would have been obvious to one of ordinary skill in the art to optimize the amounts of fatty acids with a reasonable expectation for successfully obtaining the effective composition of Matsuura.

Matsuura does not teach the composition wherein the ALA is derived from kiwi seed oil. However, at the time of the claimed invention, kiwi seed oil was known to be a rich source of ALA. In support, Maingault teaches that kiwi seeds are high in ALA and that administration of the oil is suitable for pharmaceutical administration. At the time of the claimed invention, it would have been obvious to use kiwi seed oil as the source of ALA in the composition of Matsuura since it was a known source of ALA, as evidenced by Maingault. Moreover, at the time of the claimed invention, one of ordinary skill in the art would have been motivated by the

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teachings of Maingault to use kiwi seed oil in the composition of Matsuura with a reasonable expectation for successfully obtaining the effective pharmaceutical on Matsuura.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth A. Davis whose telephone number is 571-272-0915. The examiner can normally be reached on M-F 7:00 -3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ruth A. Davis/
Primary Examiner
Art Unit 1651

December 7, 2007